



Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022
+1 212 909 6000

October 18, 2021

BY ECF

Hon. Analisa Torres
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *SEC v. Ripple Labs, Inc.*, No. 20-cv-10832 (AT) (SN)

Dear Judge Torres:

We write on behalf of Defendant Ripple Labs Inc. (“Ripple”) in opposition to the SEC’s letter dated October 15, 2021, which seeks a *two-month* extension of the Court-ordered expert discovery deadline (“SEC Letter,” ECF No. 389). While Ripple is prepared to meet the original schedule, as an accommodation to the SEC, it has agreed to extend the deadline for rebuttal expert reports to November 12. Accordingly, this dispute concerns only the date by which expert depositions should be completed, which Ripple proposes should be December 10. A December 10 deadline provides four full weeks after the service of rebuttal reports to complete expert depositions. This proposal is reasonable and achievable—the respective parties have the resources to complete discovery on that timetable, certain depositions can be scheduled immediately, and each of Ripple’s experts are available to be deposed within that timeframe.

The SEC’s proposed deadline of January 14, by contrast, would needlessly prolong discovery, despite both parties’ stated intention to resolve this litigation on an expedited timeline and this Court’s observation in its October 4 Order denying intervention, but granting *amici* status, that “[d]iscovery in this action has already been extended . . . and the Court is not inclined to permit further delay” ECF No. 372 at 8. In addition, further delay would prejudice Ripple and the market for XRP. And the SEC has failed to demonstrate good cause to extend the deadline beyond December 10. In fact, on literally the day before filing its motion, the SEC represented to Ripple that expert discovery could be completed by *December 22*, and was even willing to move the deadline to *December 17*—just one week later from Ripple’s proposed deadline. Yet despite that concession mere hours before filing, the SEC suddenly claims that expert discovery cannot be completed until mid-January 2022.

The SEC’s request for a two-month extension of expert discovery should be denied, and the Court should order that the expert discovery deadline be extended to December 10, as Ripple has proposed. (A proposed Order is attached as Exhibit A.)

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I. Just Before Filing This Motion, The SEC Proposed a December 17 Deadline.

Ripple has sought in good faith to reach agreement with the SEC on the expert discovery deadlines without court intervention. Ripple agreed, for instance, to extend the expert rebuttal report deadline to November 12, 2021, after the SEC indicated that it was not able to meet the original Court-ordered deadline of October 29, 2021.

Although Ripple was prepared and able to complete expert discovery by the Court-ordered deadline, Ripple negotiated in good faith with the SEC to reach a compromise. The SEC's initial proposal, made just three days before it filed this motion, was to extend the close of expert discovery to December 22. *See* SEC Letter, Ex. B at 3 (Email of M. Sylvester, Oct. 12, 2021). The SEC's stated reason was the "number of experts involved and the work to be performed, the many fact discovery disputes pending before the court, and the fact that our proposed schedule would not implicate any other impending deadlines." *Id.*

On October 14—the day before the SEC filed its motion—Ripple (again to accommodate the SEC) countered with a December 10 deadline. Ripple was also "prepared to immediately start scheduling depositions of experts for whom no rebuttal report will be filed," which would mean that "the parties would have completed a meaningful portion of the depositions by mid-November." SEC Letter, Ex. B at 2 (Email of A. Ceresney, Oct. 15, 2021).

The SEC did not agree and proposed a deadline of December 17. *See id.* (noting "the SEC's proposal to extend expert depositions even further out, to December 17, which you proposed today"). In other words, on the very day the SEC filed a motion asking this Court for an extension of expert discovery to *January 14, 2022*, the SEC represented to Ripple that discovery could in fact be completed nearly one month earlier, by December 17.

Even putting aside the SEC's inconsistency with its own prior positions, its letter offers *no* argument whatsoever to suggest that an extension into January 2022 is necessary. The SEC devotes significant effort to arguing that Ripple's December 10 proposal is not reasonable (a contention that is wrong, for the reasons described below); but the SEC never even tries to argue that an additional month beyond that date is necessary. The SEC has failed to carry its burden of demonstrating good cause for an extension into January 2022.

II. Ripple's Proposed Deadline of December 10 is Reasonable and Appropriate.

At present, it appears that there will be a combined total of 14 experts identified by the parties. As the SEC notes, Ripple's proposal allows 18 business days after the submission of rebuttal reports for these depositions (assuming none would occur on the day after Thanksgiving). *See* SEC Letter at 2.

The SEC's complaint (*see* SEC Letter at 2) that this is not enough time is baseless. First, it should be possible to depose multiple experts either before or immediately after rebuttal reports are submitted, because several experts are unlikely to be subject to rebuttals. Ripple has already informed the SEC that it does not intend to submit a rebuttal report in response to one of the SEC's experts; the SEC has declined to provide reciprocal information, but Ripple anticipates that at least one, and perhaps several, of its experts will be un rebutted. Those experts can be deposed at any time beginning now. In addition, there is no reason why there cannot be multiple expert depositions

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in a single day. The SEC currently has eight attorneys assigned to this case, including six who took depositions during fact discovery; that is more than enough to cover two simultaneous expert depositions should the need arise. And there is likely no need; if the unrebutted experts are deposed before November 12, then even if *zero* depositions happen during the week of November 15 in order to allow the SEC “to digest and analyze multiple rebuttal reports,” that still leaves 13 business days to conduct the remaining depositions. SEC Letter at 2. The parties have more than sufficient resources to do that.

III. Extending Expert Discovery to January 2022 Will Unduly Prejudice Ripple and Continue to Freeze XRP Markets in the United States.

The SEC’s proposal to extend expert discovery by more than two months will further prejudice Ripple; thus, the Court can and should deny the SEC’s motion on this basis alone. *See, e.g., Dumann Realty, LLC v. Faust*, 2011 WL 2749523, at *2 (S.D.N.Y. July 8, 2011) (“[A] district court ‘also may consider . . . whether allowing the [modification of a schedule] at this stage of the litigation will prejudice defendants.’”) (second brackets in original) (quoting *Kassner v. 2nd Ave. Delicatessen Inc.*, 496 F.3d 229, 244 (2d Cir. 2007)).

The SEC’s claim that its proposed extension “would not prejudice Defendants in any material way” ignores the obvious. *See* SEC Letter at 2-3. The pendency of this lawsuit has significantly hurt the markets for XRP, especially in the United States. Ripple’s cross-border payment product relies on liquid XRP markets. *See, e.g.,* ECF No. 46 ¶¶ 359-360. The SEC well knows that within days of it filing its suit, almost 20 exchanges de-listed or suspended XRP trading in the United States,¹ and more have since followed suit, critically damaging the market for XRP. Every additional day this suit is pending is a day in which the XRP markets—markets that Ripple depends on for its product offerings—remain frozen in the United States. This is severely prejudicial to Ripple’s business.

The SEC offers no substantive response. Instead, it merely argues in a footnote that Ripple has made “continued robust sales of XRP” and that XRP’s price has risen during the pendency of the litigation. *See* SEC Letter at 3 n.2. That Ripple’s business (particularly overseas) and the XRP markets (again, principally overseas) have shown some resilience in the face of the SEC’s lawsuit does not mean that Ripple and the XRP markets have not been, and continue to be, severely damaged by the pendency of this suit. Indeed, although the price of XRP has risen in the last year along with the broader digital currency market, its performance has lagged behind the market, including currencies like bitcoin and ether.²

Finally, any delay beyond Ripple’s proposed expert discovery timeline would necessarily impact the timing of summary judgment motions, a delay that is unnecessary and highly prejudicial

¹ *See, e.g., Will XRP Survive The SEC’s Charges Against Ripple As XRP Is Delisted From Numerous Exchanges?*, Liquidity Finder (Jan. 6, 2021), <https://www.liquidityfinder.com/news/Will-XRP-survive-the-SEC%E2%80%99s-Charges-against-Ripple-as-XRP-is-delisted-from-numerous-exchanges?id=ckjlpgo6p978t0a12363snngu>.

² According to publicly available data from CoinMarketCap, since the filing of this lawsuit, the price of bitcoin has increased from \$22,803.08 to \$61,553.62 (169.9%) and the price of ether has increased from \$609.82 to \$3,847.10 (530.9%). The price of XRP, by contrast, has increased from \$0.5169 to \$1.09 (110.9%).

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to Ripple. In addition, the SEC claims that pending discovery motions before Judge Netburn would delay any motions for summary judgment. But there are still two months until the end of expert discovery under Ripple's proposal, allowing time for Judge Netburn, who has promptly resolved all disputes in the past, to decide those pending motions.

* * * *

An extension of the expert discovery schedule in this case beyond December 10 would cause prejudice to Ripple and the XRP markets. In addition, the SEC has not met its burden of showing that there is good cause to extend the schedule to January 14, 2022. The SEC's efforts to unnecessarily and prejudicially delay resolution of this case with an extension to January 14 should be denied and the Court should only extend expert discovery to December 10.

Respectfully submitted,



Andrew J. Ceresney
(ajceresney@debevoise.com)
Mary Jo White
Lisa Zornberg
Erol Gulay
Christopher S. Ford
Anna Gressel
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, NY 10022
+1 (212) 909-6000

Attorneys for Defendant Ripple Labs Inc.

cc: All counsel of record (by ECF)